



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
-----------------	-------------	----------------------	---------------------	------------------

10/595,452

04/20/2006

Roland V Hornstein

HERM-1-1001

9933

25315 7590 04/28/2008
BLACK LOWE & GRAHAM, PLLC
701 FIFTH AVENUE
SUITE 4800
SEATTLE, WA 98104

EXAMINER

LOPEZ, FRANK D

ART UNIT

PAPER NUMBER

3745

MAIL DATE

DELIVERY MODE

04/28/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/595,452	Applicant(s) HORNSTEIN, ROLAND	
	Examiner F. Daniel Lopez	Art Unit 3745	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☐ Claim(s) 13-21 is/are pending in the application.
4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☐ Claim(s) 13 and 15-21 is/are rejected.
- 7) ☐ Claim(s) 14 is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 4/20/06 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date <u>1/24/07</u> . | 6) <input type="checkbox"/> Other: ____. |

Drawings

The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the container near the sound absorber (claim 19, see also 112 rejection below) and the pressure accumulator and pressure generator, as alternatives, connected to the discharged air (claim 21) must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as “amended.” If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either “Replacement Sheet” or “New Sheet” pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Claim Rejections - 35 USC § 112

Claims 16 and 19 are rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 16 line 1-3 “the two first openings” and line 2-3 “the two second openings” have no antecedent basis. Suggest that claim 16 depend from claim 14.

Art Unit: 3745

In claim 19 line 1-2 “a container is near the sound absorber for receiving hydraulic fluid” is confusing, since it appears to be a part of the prior art embodiment, not of the embodiment of the invention (e.g. page 3 last paragraph).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. § 103 which forms the basis for all obviousness rejections set forth in this Office action:

A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Subject matter developed by another person, which qualifies as prior art only under subsection (f) or (g) of section 102 of this title, shall not preclude patentability under this section where the subject matter and the claimed invention were, at the time the invention was made, owned by the same person or subject to an obligation of assignment to the same person.

Claims 13, 15, 17, 18 and 20 are rejected under 35 U.S.C. § 103 as being unpatentable over Riddle et al in view of Banning. Riddle et al discloses a lifting device comprising 2 hydraulically operated lifting units (21, 22), including a piston in a cylinder tube connected by a mechanical traverse support (1, 2) and a mechanical anti-lowering means (13, equivalent to the disclosed means); wherein air is supplied to a hydraulic reservoir (15), which causes hydraulic fluid to be supplied to the lifting units; but does not disclose that the lifting units include a stationary hollow plunger piston having a cavity, receiving hydraulic fluid, supported at a base, and a tube within the cavity extending from a point near a first end to a second end of the piston; wherein the piston tube includes an opening near the second end and receives compressed air; that a surface of the hydraulic fluid in the pistons in a retracted state is near the opening of the piston tube near the second end; that hydraulic fluid flows between the cavities of the piston and the cavities of the cylinder tubes; or that a sound absorber receives air from the piston tubes during lowering.

Banning teaches, for a lifting device comprising a hydraulically operated lifting unit (21, 22), including a piston in a cylinder; that the lifting unit includes a stationary hollow plunger piston (12) having a cavity, receiving hydraulic fluid, supported at a base, and a tube (32) within the cavity extending from a point near a first end to a second end of the piston; wherein the piston tube includes an opening near the second end and receives compressed air (via 42, 44); that a surface of the hydraulic fluid in the pistons in a retracted state is near the opening of the piston tube near the second end (e.g. fig 1); and that hydraulic fluid flows between the piston cavity of the and the cylinder tube cavity (via 30).

Since the lifting units of Riddle et al and Banning are interchangeable in the lifting device art; it would have been obvious at the time the invention was made to one having ordinary skill in the art to make the lifting units of Riddle et al include a stationary hollow plunger piston having a cavity, receiving hydraulic fluid, supported at a base, and a tube within the cavity extending from a point near a first end to a second end of the piston; wherein the piston tube includes an opening near the second end and receives compressed air; that a surface of the hydraulic fluid in the pistons in a retracted state is near the opening of the piston tube near the second end; and that hydraulic fluid flows between the pistons' cavities and the cylinder tubes' cavities, as taught by Banning, since one having ordinary skill in the art would have been able to carry out such a substitution and the resulting combination would predictable work in the same manner.

Official notice is taken that a sound absorber receives air from a fluid motor, for the purpose of decreasing the sound of the exhaust. It would have been obvious at the time the invention was made to one having ordinary skill in the art to include a sound absorber, to receive air from the piston tubes of Riddle et al, during lowering, for the purpose of decreasing the sound of the exhaust.

Claim 21 is rejected under 35 U.S.C. § 103 as being unpatentable over Riddle et al in view of Banning as applied to claim 13 above, and further in view of Makaroff. The modified Riddle et al discloses all of the elements of claim 21; but does not disclose that pressurized discharged air is at least one of partially sent to a pneumatic accumulator or sent to a pressure generator.

Makaroff teaches, for a lifting device comprising a lifting unit (25), including a piston in a cylinder tube, wherein air is supplied to a hydraulic reservoir (10), which causes hydraulic fluid to be supplied to the lifting units; that pressurized discharged air is at least partially sent to a pneumatic accumulator (3) and then sent to a pressure generator (5), for the purpose of decreasing power consumption (e.g. page 2 column 1 line 1-5).

Since Riddle et al and Makaroff are both from the same field of endeavor, the purpose disclosed by Makaroff would have been recognized in the pertinent art of Riddle et al. It would have been obvious at the time the invention was made to one having ordinary skill in the art to at least partially send pressurized discharged air of the modified Riddle et al to a pneumatic accumulator and then to a pressure generator, as taught by Makaroff, for the purpose of decreasing power consumption.

Conclusion

Claim 14 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Claim 16 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. § 112, second paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Dan Lopez whose telephone number is 571-272-4821. The examiner can normally be reached on Monday-Thursday from 6:00 AM -4:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ed Look, can be reached on 571-272-4820. The fax number for this group is 571-273-8300. Any inquiry of a general nature should be directed to the Help Desk, whose telephone number is 1-800-PTO-9199.

/F. Daniel Lopez/

F. Daniel Lopez
Primary Examiner
Art Unit 3745
April 28, 2008